

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

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**MARKY'S MARTIAL ARTS, INC dba
KILLEARN LAKES TAEKWONDO,**

:

1:19-CV03363

Plaintiff,

:

**DECLARATION OF
BLAINE MARKY IN
SUPPORT OF MOTION
FOR DEFAULT JUDGMENT**

against

:

**FC ONLINE MARKETING, INC., dba
FCOM,**

:

Defendant.

:

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I, Blaine Marky, do hereby declare as follows:

1. My name is Blaine Marky.
2. I am one of three owners of Marky's Martial Arts Inc. dba Killearn Lakes Taekwondo ("Marky's Martial Arts").
3. Marky's Martial Arts is a Taekwondo school based in Florida.
4. It attracts clients from Florida and Georgia because of its proximity to the Georgia border.
5. In addition to being one of the owners of Marky's Martial Arts, I operate Marky's Martial Arts on a day-to-day basis, and in so operating Marky's Martial Arts, I am familiar with its business practices, its finances, its operations costs, costs it incurred in retaining lawyers,

and other costs of doing business. I am also knowledgeable about its business losses due to the actions of FC Online Marketing, Inc. ("FCOM").

6. I am over the age of 18, of sound mind, and I can make this Declaration.
7. The facts that I state in this Declaration are true and correct and within my personal knowledge, and if called to do so, I could testify to these facts in open court.
8. I am submitting this Declaration in support of Marky's Martial Arts Motion for Entry of Default and Default Judgment; in addition, I am submitting this Declaration to assist this Court in understanding Marky's Martial Arts damages.
9. In October 2016, Marky's Martial Arts entered into a Subscription Agreement and a General Terms Agreement the ("Agreements"), under which Defendant, FCOM, agreed to provide marketing services to Marky's Martial Arts. FCOM provided marketing services to Marky's Martial Arts from October 2016 through February 2018, when Marky's Martial Arts terminated the Agreements because FCOM had created identical websites for Marky's Martial Arts competitors.
10. On or around June 3, 2018, Marky's Martial Arts discovered that in addition to building identical websites for Marky's Martial Arts competitors, FCOM had also exposed Marky's Martial Arts list of current and prospective clients. Marky's Martial Arts list of clients included the names of more than 750 clients and prospective clients.
11. Marky's Martial Arts approached FCOM about this data breach and FCOM admitted that it had caused the data breach, but FCOM refused to take timely and critical steps to claw back Marky's Martial Arts' data.

12. In fact, Marky's Martial Arts is informed, and therefore believes, that its client list had been exposed to its competitors for several months before Marky's Martial Arts learned it data had been exposed.
13. Marky's Martial Arts learned that its data had been disclosed when its clients and prospective clients began unsubscribing from Marky's Martial Arts' services after having been introduced to Marky's Martial Arts competitor's services.
14. Marky's Martial Arts lost a substantial number of clients to its competitors.
15. In addition, Marky's Martial Arts has suffered substantial damages from the lost list of potential clients to its competitors as a direct result of FCOM's intentional and negligent actions.
16. I have tracked and calculated Marky's Martial Arts damages, and, without equivocation, testify that Marky's Martial Arts suffered the following damages:
 - **\$248,296.72** in lost income;
 - **\$4,310.19** in travel expense in connection with this litigation;
 - **\$29,047.38** in remedying FCOM's data breach and seeking to replenish clients lost as a result of FCOM's data breach; and
 - **\$43,217.07** in attorney's fees incurred in connection with this litigation
17. Not including pre-and-post-judgment interest of 9 percent that would have begun accruing on July 3, 2019, and not including punitive damages, which are set forth in a companion briefing, Marky's Martial arts seeks **\$324,871.36** against FCOM and against entities to which FCOM has transferred resources to avoid Marky's Martial Arts' Judgment.
18. Marky's Martial Arts calculated its damages using this formula:

- i. Marky's Martial Arts first took the total number of individuals in its client database, which was **750**;
- ii. For the previous two years in working with FCOM, Marky's Martial Arts had converted **13.7** percent of prospective clients into clients;
- iii. Based on Marky's Martial Arts conversion rate of 13.7 per cent, Marky's Martial Arts would have had an additional **103** clients;
- iv. Each of the 103 clients would have paid non-tuition payments to Marky's Martial Arts of \$49.16 per month; and an average tuition payment of \$85.80 per month;
- v. In total each of the **103** students would have paid Marky's Martial Arts **\$134.96** per month.
- vi. The average time a client remained member of Marky's Martial Arts is 17.86 months;
- vii. On a monthly basis, based on the product of \$134.96 multiplied by 103, Marky's Martial Arts would have earned an additional **\$13,900.88** *per month* but for FCOM leaking its data;
- viii. When the total amount lost per month (**\$13,900.88**) is multiplied by the average length of time a member maintained its membership with Marky's Martial Arts (17.86 months), the total lost income is **\$248,296.72**.

19. FCOM has not paid any of the amounts described above to Marky's Martial Arts.

20. The damages set forth above are as of October 22, 2019 and are subject to increase as stated in the companion Motions to this Affidavit.

I declare under penalty of perjury under the laws of the State of Florida and under the laws of the United States of America that the foregoing is true and correct. Executed on: October 29, 2019.

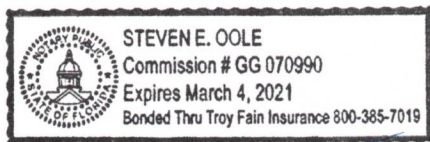
[SIGNATURE APPEARS ON NEXT PAGE]

Blaine Marky

Blaine Marky

STATE OF FLORIDA
COUNTY OF LEON

Sworn to (or affirmed) and subscribed before me this 29th day of October, 2020, by
Blaine Marky.



[Signature]

Personally Known ✓ OR Produced Identification _____

Type of Identification Produced _____